

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Chaves	Team: Squad #16	CCRB Case #: 202101477	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/04/2021 11:20 AM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 9/4/2022	EO SOL 9/4/2022	
Date/Time CV Reported Fri, 03/05/2021 11:27 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 03/05/2021 11:27 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Thomas Garguilo	4371	949006	120 PCT
2. LT Matthew Harrison	00000	930323	120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Michael Damico	7100	932511	060 DET
2. POF Nicole Fox	22143	962410	060 PCT
3. POM Andrew Collette	29827	967012	120 PCT
4. POM Brandon Schneider	26859	967328	120 PCT
5. POM Joseph Innocente	14311	956761	120 PCT
6. POM Eric Johnson	07704	956777	120 PCT
7. POF Sasha George	05267	958623	120 PCT
8. POM Cory Pilzer	09302	953254	120 PCT
9. POM Gregory Carosella	21200	968996	120 PCT
10. POM Michael Kirchhoffer	15215	956023	120 PCT
11. SGT Antonio Cannata	02800	943044	120 PCT
12. POM James Krebs	06991	952951	120 PCT
13. POM Noor Rahman	04612	954256	120 PCT
14. SGT John Pedersen	05153	951026	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Matthew Harrison	Abuse: Lieutenant Matthew Harrison threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
B.SGT Thomas Garguilo	Abuse: Sergeant Thomas Garguilo threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
C.LT Matthew Harrison	Abuse: Lieutenant Matthew Harrison entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
D.SGT Thomas Garguilo	Abuse: Sergeant Thomas Garguilo entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
E.LT Matthew Harrison	Abuse: Lieutenant Matthew Harrison damaged § 87(2)(b)'s property.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
F.SGT Thomas Garguilo	Abuse: Sergeant Thomas Garguilo damaged § 87(2)(b) s property.	

## Case Summary

On March 5, 2021, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

At approximately 11:10 AM on March 4, 2021, § 87(2)(b) called 911 and reported that her husband, § 87(2)(b) had attacked her. Officers from the 120<sup>th</sup> Precinct responded to § 87(2)(b)'s home, located at § 87(2)(b) in Staten Island, and spoke with her in the hallway just outside her apartment door. PO Brandon Schneider, PO Andrew Collette, PO Joseph Innocente, and PO Eric Johnson arrived first along with EMTs and spoke to § 87(2)(b) about the reported attack. Backing units, including PO Cory Pilzer, PO Sasha George, Sgt. Thomas Gargiulo, and Lt. Matthew Harrison, arrived soon after.

§ 87(2)(b) refused medical attention or to fill out a domestic incident report (DIR). PO Schneider, PO Collette, PO Innocente, and PO Johnson let § 87(2)(b) go into her apartment and close the door under the presumption that she was solely an uncooperative criminal victim. Nearly simultaneously, however, PO Pilzer determined that § 87(2)(b) was a wanted suspect with outstanding probable cause I Cards stemming from previous incidents. § 87(2)(b) entered her apartment and closed the door before PO Pilzer spoke to her or his fellow officers about the I Cards.

After learning of § 87(2)(b)'s I Cards from PO Pilzer, Lt. Harrison told his subordinate officers that § 87(2)(b) was a wanted suspect, and officers began knocking on § 87(2)(b)'s door and ordering her to come outside. With Lt. Harrison standing a few feet away, Sgt. Gargiulo repeatedly threatened to break § 87(2)(b)'s door down if she did not open it (**Allegation A: Abuse of Authority: Threat to damage property:** § 87(2)(g)).

**Allegation B: Abuse of Authority: Threat to damage property:** § 87(2)(g) § 87(2)(b) eventually opened her door and officers pushed inside (**Allegation C: Abuse of Authority: Entry of premise:** § 87(2)(g)). **Allegation D: Abuse of Authority: Entry of premise:** § 87(2)(g) Over the course of their banging on the door and rapidly entering the apartment, officers allegedly damaged § 87(2)(b)'s door and entryway (**Allegation E: Abuse of Authority: Property damaged:** § 87(2)(g)). **Allegation F: Abuse of Authority: Property damaged:** § 87(2)(g) Officers arrested § 87(2)(b) inside her apartment and transported her to the 120<sup>th</sup> Precinct stationhouse.

The investigation obtained BWC videos from PO Schneider (**Board Review 01**), PO Collette (**Board Review 02**), PO Innocente (**Board Review 03**), PO Johnson (**Board Review 04**), Lt. Harrison (**Board Review 05**), PO Pilzer (**Board Review 06**), PO George (**Board Review 07**), PO Noor Rahman (**Board Review 08**), PO James Krebs (**Board Review 09**), Sgt. Gargiulo (**Board Review 10**), Sgt. Antonio Cannata (**Board Review 11**), and Sgt. John Pederson (**Board Review 12**).

The investigation also obtained 27 short video clips of the incident from a motion-sensitive surveillance camera mounted outside § 87(2)(b)'s apartment door (**Board Review 13**). While these videos capture portions of the incident and are consistent with the other available evidence, they do not offer a coherent record of the general incident timeline or the FADO allegations.

## Findings and Recommendations

**Allegation A – Abuse of Authority: Threat to damage property: Lieutenant Matthew Harrison threatened to damage § 87(2)(b)'s property.**

**Allegation B – Abuse of Authority: Threat to damage property: Sergeant Thomas Garguilo threatened to damage § 87(2)(b)'s property.**

**Allegation C – Abuse of Authority: Entry of premises: Lieutenant Matthew Harrison entered § 87(2)(b) § 87(2)(b) in Staten Island.**

**Allegation D – Abuse of Authority: Entry of premises: Sergeant Thomas Garguilo entered § 87(2)(b) § 87(2)(b) in Staten Island.**

§ 87(2)(b) provided a detailed statement on March 11, 2021 (**Board Review 14**). Lt. Harrison was interviewed on May 18, 2021 (**Board Review 15**). Sgt. Garguilo was interviewed on May 28, 2021 (**Board Review 16**). PO George was interviewed on August 10, 2021 (**Board Review 17**).

It is undisputed among the interviewed parties and well-documented in multiple BWC videos that this incident started after the police received 911 calls reporting that § 87(2)(b)'s husband had physically attacked her. Starting at 1:20 of PO Innocente's BWC video (**Board Review 03**), PO Innocente, PO Schneider, PO Collette, and PO Johnson approached § 87(2)(b) in the building hallway outside her apartment door. PO Innocente asked § 87(2)(b) what had happened and offered to have an EMT examine § 87(2)(b). § 87(2)(b) refused medical attention and said that she only wanted § 87(2)(b) § 87(2)(b) apprehended. § 87(2)(b) provided a detailed description of § 87(2)(b) § 87(2)(b) appearance and clothing and said that he ran away from the scene in a specific direction. PO Innocente then told § 87(2)(b) that without her filling out a report, the police could not arrest § 87(2)(b) § 87(2)(b) and the officers spoke back and forth, with § 87(2)(b) trying to explain the various reasons that § 87(2)(b) could and should be arrested, and the officers telling her that she needed to "cooperate" and file a report. § 87(2)(b) said that she did not want to file a report because she did not have time right then.

PO Johnson's BWC video clearly shows what happened next. PO Pilzer reached the incident at approximately 2:05 in PO Johnson's BWC video (**Board Review 04**, which corresponds to approximately 1:15 in PO Pilzer's own BWC video, **Board Review 06**). Lt. Harrison followed behind PO Pilzer, reaching the incident approximately ten seconds later. At 2:45 in PO Johnson's BWC video, PO Pilzer is visible at the left edge of the video frame, speaking into a cellphone. PO Pilzer, speaking into his phone, asked, "What's she look like, is she blonde? Is she white?" He then angled his face and spoke more loudly, asking § 87(2)(b) what her name was. § 87(2)(b) told PO Pilzer that her name was § 87(2)(b). PO Pilzer then turned back to his phone and asked, "What's up with that?" At 3:05 in PO Johnson's BWC video, § 87(2)(b) asked PO Innocente if she could go put her shoes on. PO Innocente replied, "Yeah yeah yeah, we'll be right here." None of the officers took any action to prevent § 87(2)(b) from entering her apartment. § 87(2)(b) went into her apartment and closed the door.

At 3:08 in PO Johnson's BWC video, PO Pilzer asked "Is she 92?" into his phone, using the NYPD radio code for "under arrest." Lt. Harrison, wearing glasses and a light blue medical mask, is visible in the video immediately next to PO Pilzer at this point. At 3:15 in the video, PO Pilzer turned toward § 87(2)(b)'s apartment and told the on-scene officers to open the door. He then shouted, "Why would you let her go inside?!" Multiple officers audibly expressed confusion, including PO Johnson, who asked, "Why wouldn't I

let her go inside?” PO Pilzer responded, “She’s collared...She has three I Cards.” PO Johnson replied, “I’m not supposed to know that?!”

PO Pilzer’s and Lt. Harrison’s BWC videos (**Board Review 06** and **Board Review 05**) offer the clearest recordings of what happened next. At 3:00 in both videos, Lt. Harrison waved and called PO Pilzer over to speak with him. PO Pilzer told Lt. Harrison that another officer (who was not on scene during this incident) had prepared a criminal complaint report (“a 61”) for § 87(2)(b) on a previous date, but § 87(2)(b) had provided her name as § 87(2)(b). The officer PO Pilzer spoke with had looked this name up in the NYPD’s computer systems and determined it was a false name. This officer also learned § 87(2)(b)’s real name and that she had outstanding probable cause I Cards against her. PO Pilzer in turn learned this information from the off-scene officer over the phone during the current incident. At 4:25 in Lt. Harrison’s BWC video (**Board Review 05**), PO Pilzer showed Lt. Harrison his cellphone screen, which displayed a photo of § 87(2)(b).

The officers began debating whether to forcibly enter § 87(2)(b)’s apartment. Starting at 4:50 in Lt. Harrison’s BWC video (**Board Review 05**, which corresponds to 2:33 in Sgt. Garguilo’s BWC video, **Board Review 10**), Sgt. Garguilo and Lt. Harrison had the following dialogue:

Sgt. Garguilo: “What’s going on here?”

Lt. Harrison: “Says she gave a fake name, she’s wanted on three I Cards-”

Sgt. Garguilo (interrupting): “Ooh!”

Lt. Harrison: “We just found out after she went back to put her shoes on and went inside.”

Sgt. Garguilo: “Ooooh I get to kick the door open!”

Lt. Harrison: “No, we’re not gonna kick the door open.”

Sgt. Garguilo: “Why?! Come on...”

Lt. Harrison: “Stop. I had to pull you off a ledge once already.”

Sgt. Garguilo: “So?! So what? I just wanna break the door I don’t give a shit if she’s there or not.”

It is undisputed and clearly documented in multiple BWC videos that once the officers all knew that § 87(2)(b) was a wanted suspect, they repeatedly banged on her door and ordered her to come outside. Starting at 11:07 in PO Schneider’s BWC video (**Board Review 01**), Sgt. Garguilo said, “Ma’am, you gotta open this door now or we’re gonna rip the door off its hinges.” At 11:15 in the video, PO George began kicking the door loudly with her right foot while Sgt. Garguilo said, “Miss you gotta open the door or I’m gonna break the door down.” Both PO George and Sgt. Garguilo continued to threaten to break the door down, and Sgt. Garguilo loudly pretended to use his radio to call for ESU’s help in forcibly entering the apartment. Lt. Harrison’s BWC video shows that he stood directly next to Sgt. Garguilo during this portion of the incident (8:30 of **Board Review 05**).

In his interview, Lt. Harrison said he and PO Pilzer learned that § 87(2)(b) was a wanted suspect while § 87(2)(b) was still outside her apartment, standing in the building hallway. As described above, this is contradicted by the BWC videos, which show that PO Pilzer only confirmed § 87(2)(b)’s status as a suspect as she entered her apartment and closed the door. The video further shows that PO Pilzer only relayed his information about § 87(2)(b) to Lt. Harrison and other officers once § 87(2)(b) was already inside her

apartment.

In his interview, Lt. Harrison said that because § 87(2)(b) was wanted on probable cause I Cards and fled back into her apartment, the officers had the authority to take her door or enter her apartment without consent. No further factors gave the officers this authority. From Lt. Harrison's perspective, the presence of an arrest warrant would not have made any difference. Because § 87(2)(b) started the incident outside her home and then entered it, she had no legal protection from officers entering to arrest her. Lt. Harrison said that if someone runs into their apartment while officers are dealing with them or chasing them, the officers can enter and apprehend them. Lt. Harrison specifically denied the presence of escalating factors such as the possible presence of weapons (which he had no reason to suspect were present), reports that § 87(2)(b) was unusually dangerous (her I Cards were for routine domestic offenses, not assaulting an officer or anything similar), or evidence that § 87(2)(b) was a threat to herself.

In his interview, Sgt. Garguilo said that he believed that the officers had the legal authority to take the door down because of the I-Cards for § 87(2)(b)'s arrest and the fact that she was still detained when she went back into her apartment. When shown his BWC video from 2:32 to 3:08, Sgt. Garguilo confirmed that the footage showed the portion of the incident where he made a joke about breaking down the door and said, "I just want to break the door down I don't give a shit." He also clarified that Lt. Harrison's comment about a ledge was a joke about a prior, unrelated incident.

In his interview, Lt. Harrison stated that while he did not recall instructing his subordinates to enter § 87(2)(b)'s apartment, he "had no problem with it."

Under the doctrine of hot pursuit, a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place. People v. Hunter, 92 A.D.3d 1277, 1279-80 (2012) (citing United States v. Santana, 427 U.S. 38, 43 (1976) (citing United States v. Watson, 423 U.S. 411 (1976)); People v. Levan, 476 N.Y.S.2d 101 (1984)). However, the claim of hot pursuit is unconvincing when there is no immediate or continuous pursuit of a suspect from the scene of a crime. People v. Hunter, 92 A.D.3d 1277, 1280 (2012) (citing Welsh v. Wisconsin, 466 U.S. 740, 753 (1984)). **(Board Review 18)**. Absent exigent circumstances, officers may not enter a home to make an arrest without a warrant, even when they have probable cause. Payton v. New York, 445 U.S. 573 (1980). **(Board Review 19)**.

The available evidence clearly shows that this incident did not fall within the legal paradigm of hot pursuit. Officers did not pursue § 87(2)(b) from the scene of a crime, as by all accounts her I Cards stemmed from prior, unrelated incidents. Rather, officers first spoke to § 87(2)(b) because she was the reported victim of a crime, and they freely allowed her to enter to her apartment. The subject officers' statements notwithstanding, the BWC video shows that not only did officers let § 87(2)(b) leave the public hallway and enter her private residence, but that all the officers on scene except for PO Pilzer had no idea that § 87(2)(b) was wanted at this point. None of the officers, including PO Pilzer, took any actions to detain or arrest § 87(2)(b) before she went inside. By the time the officers began to seek § 87(2)(b)'s apprehension, they were simply standing outside her locked door without a warrant. As shown in the collected evidence and specifically acknowledged by both subject officers, there were no exigent or emergency circumstances that factored into their decision to enter.

While Lt. Harrison did not bang on § 87(2)(b)'s door or verbally threaten to break it down himself, he stood immediately nearby as Sgt. Garguilo led officers in repeated

attempts to coerce § 87(2)(b) into opening her door. By his own account, Lt. Harrison did not stop his subordinate officers from threatening to damage § 87(2)(b)'s door or entering her apartment and "had no problem" with their actions. Sgt. Garguilo excitedly joked about "not giving a shit" about having a rationale for breaking down § 87(2)(b)'s door, repeatedly threatened to do so himself (going so far as to pretend to bring ESU to the scene) and supervised other officers banging on the door and making threats. As Lt.

§ 87(2)(b), § 87(2)(g)

**Allegation E – Abuse of Authority: Property damaged: Lieutenant Matthew Harrison damaged § 87(2)(b)'s property.**

**Allegation F – Abuse of Authority: Property damaged: Sergeant Thomas Garguilo damaged § 87(2)(b)'s property.**

In her interview, § 87(2)(b) said that while she was inside her apartment, officers started hitting the steel apartment door with a battering ram or batons and eventually forced it open. § 87(2)(b) never opened the door for the officers to come in. The officers damaged the door so that, after the incident, it would not swing or close properly. Officers also knocked a hole in the bottom of the hallway wall approximately three feet inside the threshold, but § 87(2)(b) did not see how or when this happened. An officer broke a kitchen cabinet door and a kitchen drawer by opening them too forcefully.

In their interviews, the interviewed officers all denied damaging § 87(2)(b)'s property or seeing other officers do so.

§ 87(2)(b), § 87(2)(g). The video shows that § 87(2)(b) did eventually open her door and officers did not forcibly open it. The videos do not show any officer breaking § 87(2)(b)'s kitchen cabinets or drawers.

As noted in **Allegations A through D**, PO George did repeatedly, forcefully kick § 87(2)(b)'s apartment door. However, the investigation obtained no further evidence to corroborate or contradict § 87(2)(b)'s statements that her door was less functional after this incident or that her entrance hallway was damaged.

§ 87(2)(b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party. § 87(2)(b)
- Lt. Harrison has been a member of service for 19 years and has been a subject in four other CCRB complaints and four other allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Garguilo has been a member of service for 11 years and this is the first CCRB complaint in which he has been a subject.

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Investigator:	<u>Matt Chaves</u> Signature	<u>SI Matt Chaves</u> Print Title & Name	<u>05/04/2022</u> Date
Squad Leader:	<u>                    </u> Signature	<u>                    </u> Print Title & Name	<u>                    </u> Date
Reviewer:	<u>                    </u> Signature	<u>                    </u> Print Title & Name	<u>                    </u> Date